

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

MARVIN X. DAMON,

Plaintiff,

v.

Civil Action No: 1:14-26833

BART MASTERS, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

Pending before the court is plaintiff's application to proceed on appeal in forma pauperis. (Doc. No. 62). For the reasons that follow, plaintiff's motion is **DENIED**.

The court must deny plaintiff's motion because it has determined that his appeal is frivolous. Under 28 U.S.C. § 1915(e)(2)(B)(i), a court shall dismiss a case if it determines that the action or appeal is frivolous or malicious. This statute confers on the court discretion to dismiss an action as frivolous when the court determines "that the action lacks an arguable basis either in law or in fact." Nasim v. Warden, 64 F.3d 951, 953 (4th Cir. 1995) (citing Neitzke v. Williams, 490 U.S. 319, 324 (1989)).

Plaintiff's appeal possesses neither an arguable basis in law nor in fact. Nothing in plaintiff's materials suggests by more than a mere "scintilla of evidence" that any of plaintiff's

constitutional rights were violated when prison officials served kidney beans instead of navy beans during the Nation of Islam's ceremonial meal at Federal Correctional Institute McDowell.

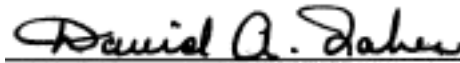
Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 253 (1986).

Accordingly, plaintiff's application to proceed on appeal in forma pauperis is **DENIED**. Pursuant to Federal Rule of Appellate Procedure 24(a)(5), plaintiff may refile his motion in the Court of Appeals and a copy of the form proscribed by Rule 24(a)(1) may be found on the website of that court.

The Clerk is directed to send a copy of this Order to counsel of record and to plaintiff, pro se.

IT IS SO ORDERED this 13th day of October, 2015.

ENTER:

A handwritten signature in black ink, reading "David A. Faber", is written over a horizontal line.

David A. Faber
Senior United States District Judge